



April 9, 2001

ENGROSSED SENATE BILL No. 408

DIGEST OF SB 408 (Updated April 5, 2001 11:47 AM - DI 52)

Citations Affected: IC 13-14; noncode.

Synopsis: Rules on water quality standards and fugitive dust. Establishes the circumstances under which a variance from a water quality standard may be granted. Establishes additional conditions for granting of a variance with respect to dischargers within the Great Lakes system. Provides that the rule on fugitive dust emissions is not subject to the expiration statute, and that the air pollution control board may not adopt a rule before July 1, 2002, that replaces that rule or that primarily concerns fugitive dust.

Effective: Upon passage; July 1, 2001.

Gard, Howard, Riegsecker
(HOUSE SPONSORS — WEINZAPFEL, WOLKINS)

January 18, 2001, read first time and referred to Committee on Environmental Affairs.
February 6, 2001, amended, reported favorably — Do Pass.
February 12, 2001, read second time, ordered engrossed.
February 13, 2001, engrossed.
February 15, 2001, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 26, 2001, read first time and referred to Committee on Environmental Affairs.
April 9, 2001, amended, reported — Do Pass.

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ES 408—LS 7180/DI 69+



April 9, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED SENATE BILL No. 408

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-14-8-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) This section
3 applies to a variance ~~granted under section 8 of this chapter or~~
4 ~~IC 13-7-7-6 (before its repeal)~~ from a water quality standard that is at
5 least in part the basis of a National Pollutant Discharge Elimination
6 System permit issued under this title.
7 (b) **A variance may be granted under this section if the applicant**
8 **for the variance demonstrates that attaining the water quality**
9 **standard is not feasible because of at least one (1) of the following:**
10 (1) **Naturally occurring pollutant concentrations prevent the**
11 **attainment of the water quality standard.**
12 (2) **Natural, ephemeral, intermittent, or low flow conditions or**
13 **water levels prevent the attainment of the water quality**
14 **standard, unless these conditions may be compensated for by**
15 **the discharge of a sufficient volume of effluent to enable the**
16 **water quality standard to be met without violating state water**
17 **conservation requirements.**

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(3) Conditions or sources of pollution caused by humans prevent the attainment of the water quality standard, and:

(A) the conditions or sources of pollution cannot be remedied; or

(B) correcting the conditions or sources of pollution would cause more environmental damage than leaving the conditions or sources of pollution in place.

(4) Dams, diversions, or other types of hydrologic modifications prevent the attainment of the water quality standard, and it is not feasible to:

(A) restore the water body to its original condition; or

(B) operate a modification in a way that would result in the attainment of the water quality standard.

(5) Physical conditions related to the natural features of the water body, including:

(A) the lack of a proper substrate cover;

(B) flow;

(C) depth;

(D) pools;

(E) riffles; or

(F) similar conditions;

that are unrelated to chemical water quality prevent the attainment of the water quality standard.

(6) Controls more stringent than those required by Section 301(b) and Section 306 of the federal Clean Water Act:

(A) would be necessary to attain the water quality standard; and

(B) if implemented, would result in substantial and widespread economic and social impact.

(c) Except as provided in subsection (c); (e), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

(1) granted for not more than five (5) years; and

(2) renewed for not more than five (5) years.

(d) Variances issued to dischargers within the Great Lakes system are subject to the following requirements:

(1) A variance may not be issued under this section to a new or recommencing Great Lakes discharger, except in accordance with 327 IAC 2-1.5-17(a).

(2) A variance will not be issued that would likely jeopardize the continued existence of an endangered or a threatened species listed under Section 4 of the federal Endangered

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Species Act or result in the destruction or adverse modification of the species' critical habitat.

(3) A variance will not be granted if standards will be attained by implementing effluent limits required under Section 301(b) and Section 306 of the federal Clean Water Act and by the permittee implementing cost effective and reasonable best management practices for nonpoint source control.

(e) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit:

(1) issued under this title; and

(2) extended under IC 13-15-3-6 or IC 13-7-10-2(e) (before its repeal);

remains in effect until the National Pollutant Discharge Elimination System permit expires.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) IC 13-14-9.5 concerning expiration of administrative rules does not apply to 326 IAC 6-4.

(b) The air pollution control board may not adopt a rule before July 1, 2002, that:

(1) replaces 326 IAC 6-4; or

(2) primarily concerns fugitive dust.

(c) This SECTION expires July 1, 2002.

SECTION 3. An emergency is declared for this act.

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SENATE MOTION

Mr. President: I move that Senator Howard be added as coauthor of Senate Bill 408.

GARD

SENATE MOTION

Mr. President: I move that Senator Riegsecker be added as coauthor of Senate Bill 408.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 408, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 2. IC 13-11-2-25.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 25.7. "Claimant", as used in IC 13-23-8 and IC 13-23-9, refers to a person that submits a claim under IC 13-23-8-1.**"

Page 2, line 24, after "liability" insert "**trust**".

Page 3, line 25, after "the" insert "**underground storage tank**".

Page 3, line 27, after "liability" insert "**trust**".

Page 3, line 27, after "fund," insert "**to pay claims submitted to the department**".

Page 3, line 28, strike "of a part".

Page 3, line 28, after "IC 13-23-9-2" insert ", ".

Page 3, strike line 29.

Page 3, line 30, strike "petroleum storage tanks,".

Page 3, line 30, delete "persons designated by eligible owners".

Page 3, delete lines 31 through 32.

Page 3, line 33, delete "eligible owners and operators,".

Page 4, line 4, strike "the part of the liability of an owner or".

Page 4, strike line 5.

Page 4, line 6, strike "under".

Page 4, line 6, after "1(3)" insert "**payments under**".

Page 4, line 6, strike "is determined in".

Page 4, strike lines 7 through 15.

Page 4, line 16, strike "liability." and insert "**may not exceed two million dollars (\$2,000,000) per occurrence for which claims are made under this chapter.**".

Page 4, line 21, strike "event" and insert "**occurrence**".

Page 4, line 21, strike "a claim is" and insert "**claims are**".

Page 4, line 25, strike "and".

Page 4, delete line 28.

Page 4, line 38, strike "event" and insert "**occurrence**".

Page 4, line 38, strike "a claim is" and insert "**claims are**".

Page 4, line 42, strike "and".

Page 5, delete line 3.

Page 5, line 12, strike "event" and insert "**occurrence**".

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- Page 5, line 12, strike "a claim is" and insert "**claims are**".
- Page 5, line 16, strike "and".
- Page 5, delete line 19.
- Page 5, line 30, delete ", a person designated by an eligible".
- Page 5, delete lines 31 through 32.
- Page 5, line 33, delete "eligible owner or operator".
- Page 5, line 34, after "liability" insert "**trust**".
- Page 6, line 16, strike "owner or operator, or an agent of the owner or".
- Page 6, line 17, strike "operator," and insert "**plan**".
- Page 6, line 23, reset in roman "cleanup guidelines set forth in the".
- Page 6, reset in roman line 24.
- Page 6, line 25, reset in roman "including the department's".
- Page 6, line 25, strike "risk-based collective action plan" and insert "**risk integrated system of closure**".
- Page 6, line 26, before "when" delete "standards" and insert "standards;".
- Page 6, line 26, strike "when the standards become effective;".
- Page 6, line 31, after "a" insert "**corrective action**".
- Page 6, line 31, strike "an owner or operator" and insert "**the claimant**".
- Page 6, line 32, after "supplement the" strike "corrective action".
- Page 6, line 35, strike "an owner's or".
- Page 6, line 36, strike "operator's" and insert "**the**".
- Page 6, line 38, after "control." insert "**For purposes of this subdivision, in the event of a conflict between compliance with the corrective action plan and the board's rules, the board's rules control.**".
- Page 6, line 42, after "owner" insert ", ".
- Page 6, line 42, strike "or".
- Page 6, line 42, after "operator" insert ", **or transferee of property under subsection (e)**".
- Page 7, line 1, after "owner" insert ", ".
- Page 7, line 1, strike "or".
- Page 7, line 1, after "operator" insert ", **or transferee**".
- Page 7, line 4, strike "immediate removal in" and insert "**initial**".
- Page 7, line 9, delete "329 IAC 9-5-5.1" and insert "**329 IAC 9-5**".
- Page 7, line 16, after "owner" insert ", ".
- Page 7, line 16, strike "or".
- Page 7, line 16, after "operator" insert ", **or transferee of property under subsection (e)**".
- Page 7, between lines 18 and 19, begin a new paragraph and insert:



"(d) An owner, an operator, or a transferee of property described in subsection (e) eligible to receive money from the fund under this section may assign that right to another person.

(e) A transferee of property upon which a tank was located is eligible to receive money from the fund under this section if the transferor of the property was eligible to receive money under this section with respect to the property."

Page 7, line 23, strike "To".

Page 7, line 23, delete "establish" and insert "Establish".

Page 7, line 31, strike "To".

Page 7, line 31, delete "determine" and insert "Determine".

Page 8, line 2, after "liability" insert "**trust**".

Page 8, line 3, after "under" insert "**section 1 of**".

Page 8, line 9, after "liability" insert "**trust**".

Page 8, line 13, strike "owner or operator" and insert "**claimant**".

Page 8, line 14, strike "owner's or operator's".

Page 8, line 16, strike "owner or operator" and insert "**claimant**".

Page 8, line 16, after "liability" insert "**trust**".

Page 8, line 23, after "section 1(2)" insert "**section 1**".

Page 8, line 23, reset in roman "of".

Page 8, line 24, strike "owner or operator of an underground".

Page 8, line 25, strike "petroleum storage tank." and insert "**claimant.**".

Page 8, line 25, strike "an owner or".

Page 8, line 26, strike "operator of an underground petroleum storage tank" and insert "**a claimant**".

Page 8, line 32, after "Sec. 8." insert "**(a)**".

Page 8, line 33, reset in roman "of:".

Page 8, reset in roman line 34.

Page 8, line 35, reset in roman "storage tanks".

Page 8, line 35, delete "four" and insert "**two**".

Page 8, line 36, delete "(\$4,000,000)" and insert "**(\$2,000,000)**".

Page 8, line 37, delete "." and insert ";".

Page 8, line 37, reset in roman "and".

Page 8, reset in roman line 38.

Page 8, line 39, reset in roman "not receive more than".

Page 8, line 39, after "two" insert "**three**".

Page 8, line 39, reset in roman "million dollars".

Page 8, line 39, after "(\$2,000,000)" insert "**(\$3,000,000)**".

Page 8, line 39, reset in roman "from the".

Page 8, reset in roman line 40.

Page 8, between lines 40 and 41, begin a new paragraph and insert:

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"(b) If the right to receive money from the fund under this chapter is assigned as described in section 4(d) of this chapter, the combined amount of money received by the assignor and the assignee from the excess liability trust fund during a year may not exceed the limits established in subsection (a).

SECTION 14. IC 13-23-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. The administrator of the excess liability trust fund shall process, approve, and deny requests made for payments from the excess liability **trust** fund under sections 2 and 3 of this chapter.

SECTION 15. IC 13-23-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) To receive money from the excess liability trust fund under IC 13-23-8-1(1), ~~an owner or operator~~ **a claimant** must:

- (1) submit a corrective action plan to the administrator of the excess liability trust fund for the administrator's approval; and
- (2) submit a copy of a work receipt for work that has been performed.

(b) If, after receiving a corrective action plan and a work receipt under subsection (a), the administrator determines that:

- (1) the corrective action plan may be approved and that the work that has been performed is consistent with the approved corrective action plan;
- (2) the work or part of the work that has been performed is reasonable and cost effective;
- (3) the work that has been performed concerns the elimination or mitigation of a release of petroleum from an underground storage tank including:

- (A) release investigation;
- (B) mitigation of fire and safety hazards;
- (C) tank removal;
- (D) soil remediation; or
- (E) ground water remediation and monitoring; and

- (4) the ~~owner or operator~~ **claimant** is in compliance with the requirements of this article and the rules adopted under this article;

the administrator shall approve the request for money to be paid from the excess liability trust fund for work that has been performed.

(c) The administrator shall develop criteria for determining the cost effectiveness of corrective action. Although not required for payment from the excess liability trust fund, ~~an owner or operator~~ **a claimant** may seek pre-approval from the administrator stating that the work to

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be performed is reasonable and cost effective.

(d) The administrator shall notify the ~~owner or operator~~ **claimant** of an approval or a denial of a request made under subsection (b) not later than sixty (60) days after receiving the request. Except as provided in subsection (f), the administrator shall notify the ~~owner or operator~~ **claimant** of all reasons for a denial or partial denial.

(e) Not later than seven (7) days after a request is approved by the administrator under subsection (b) for the reimbursement of costs for corrective action, the administrator shall forward a copy of a request approved under this section to the auditor of state.

(f) Not later than thirty (30) days after receiving an approved request under this section, the auditor of state shall pay ~~to the contractor or to the owner or operator who~~ **claimant that** submitted the approved work receipt the approved amount from money available in the excess liability trust fund.

(g) If a reason the administrator denies a request made under subsection (b) is for failure to meet the requirements of subsection (b)(1), the administrator shall notify the ~~owner or operator~~ **claimant** in writing not later than sixty (60) days after receiving the request. The ~~owner or operator~~ **claimant** has thirty (30) days from the receipt of the denial to notify the administrator of the ~~owner's or operator's~~ **claimant's** intention to appeal the denial. If the ~~owner or operator~~ **claimant** does not notify the administrator of an intention to appeal in the time provided, further review of the application is not required. If an intention to appeal is submitted within the time provided, the administrator has thirty (30) days after the receipt of the notice of the intention to appeal to provide the ~~owner or operator~~ **claimant** with all additional reasons for the denial or partial denial of the request or to specify that all reasons have been provided. The ~~owner or operator~~ **claimant** has thirty (30) days after receiving notification from the administrator of all additional reasons for the denial or partial denial or notice specifying that all reasons have been provided to file a petition for review of the denial or partial denial."

Page 9, line 2, delete "IC 13-23-8-1(2)".

Page 9, line 2, strike "an owner or operator" and insert **"IC 13-23-8-1(2), a claimant"**.

Page 9, line 10, strike "owner or".

Page 9, line 11, strike "operator" and insert **"claimant"**.

Page 9, line 16, strike "owner or operator;" and insert **"claimant;"**.

Page 9, line 17, strike "owner or operator" and insert **"claimant"**.

Page 9, line 20, strike "owner or operator" and insert **"claimant"**.

Page 9, line 24, strike "this section" and insert **"subsection (a)"**.



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Page 9, line 30, strike "owner or".

Page 9, line 31, strike "operator who" and insert "**claimant that**".

Page 9, line 34, strike "owner or operator" and insert "**claimant**".

Page 11, line 15, delete "IC 13-11-2-22" and insert "IC 13-11-2-229".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 408 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 7, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 408, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 408 (printer's error) as printed February 7, 2001.)

WEINZAPFEL, Chair

Committee Vote: yeas 9, nays 0.

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